

REVIEW MECHANISM

Report of the Review Mechanism on the overall progress of its work

I. Introduction

1. The present report of the Review Mechanism is submitted pursuant to paragraph 9 of resolution ICC-ASP/19/Res.7, “Review of the International Criminal Court and the Rome Statute system” (“the resolution”) which provides in the relevant part as follows:

“9. *Requests* the Review Mechanism (. . .) to brief the Assembly in writing on the overall progress of its work, ideally before 30 June 2021...”

2. At its eighteenth session, by resolution ICC-ASP/18/Res.7, the Assembly decided to commission an Independent Expert Review “with a view to making concrete, achievable and actionable recommendations aimed at enhancing the performance, efficiency and effectiveness of the Court and the Rome Statute system as a whole”.¹ To this end, the Assembly appointed a Group of Independent Experts to make recommendations in three areas of study: Governance, Judiciary, and Prosecution and investigation.² The Group of Independent Experts submitted its final report entitled, “Independent Expert Review of the International Criminal Court and the Rome Statute System - Final Report,” to the Assembly on 30 September 2020,³ which contains 384 recommendations addressing the three areas of the Experts’ mandate, including an annex containing a summary of prioritized recommendations.

3. At its nineteenth session, by resolution ICC-ASP/19/Res.7, the Assembly established a Review Mechanism under the auspices of the Assembly with the following mandate and composition:

“4. *Decides* to establish a Review Mechanism, under the auspices of the Assembly, led by two State Party Representatives dedicated to planning, coordinating, keeping track and regularly reporting to the Assembly Presidency and the Bureau on the assessment of the recommendations contained in the Report of the Group of Independent Experts and further action, as appropriate, as well as the issues referenced in resolution ICC-ASP/18/Res.7 paragraphs 18 and 19, and in general in accordance with that resolution. The two State Party representatives will be supported by three ad-country focal points, to ensure equitable geographical representation...”⁴

4. On 3 February 2021, the Bureau appointed the following members of the Review Mechanism representing five regional groups via a silence procedure:⁵

- H.E. Ambassador Paul van den IJssel (Netherlands) and H.E. Ambassador Michael Imran Kanu (Sierra Leone) as State Party representatives,
- Bangladesh, Chile, and Poland as *ad country* focal points.

5. Regarding its working methods, the Review Mechanism agreed to perform its tasks in a consultative manner in which the State Party representatives would play the leading role while the *ad country* focal points would provide necessary support and inputs. The members of the Mechanism would be responsible for reaching out to and suitably brief their respective regional groups on the

¹ Resolution ICC-ASP/18/Res.7, para. 6 (https://asp.icc-cpi.int/iccdocs/asp_docs/ASP18/ICC-ASP-18-Res7-ENG.pdf).

² *Ibid.*, annex II.

³ Independent Expert Review of the International Criminal Court and the Rome Statute system: Final Report - 30 September 2020 (ICC-ASP/19/16): https://asp.icc-cpi.int/iccdocs/asp_docs/ASP19/ICC-ASP-19-16-ENG-IER-Report-9nov20-1800.pdf

⁴ ICC-ASP/19/Res.7, para. 4: https://asp.icc-cpi.int/iccdocs/asp_docs/ASP19/ICC-ASP-19-Res7-ENG.pdf

⁵ https://asp.icc-cpi.int/iccdocs/asp_docs/ASP19R/Bureau20.agenda%20and%20decisions-ENG.pdf

progress of the work of the Mechanism. The Mechanism would meet as often as necessary to plan its work and to prepare the submission of the respective components of its mandate requested by the resolution. It also decided that, in light of the strict deadlines set out in the resolution, the Mechanism would set its own internal deadlines. The meetings of the Mechanism were held virtually owing to the measure adopted to address the Covid19 pandemic, but also allowing participation of its members both from the Hague and New York.

6. The Review Mechanism notes that in the resolution, the Assembly underlined that it “shall work in an inclusive and transparent manner, consulting regularly with all States Parties, the three organs of the Court, civil society and other relevant stakeholders.”⁶ Following their appointment, the members of the Review Mechanism immediately began their work and, in accordance with the principles of inclusivity and transparency, held broad consultations throughout the process with States Parties, the Court focal points⁷ and all the relevant stakeholders. The latter includes the Assembly mandate holders, the Committee on Budget and Finance, the independent offices of the Court,⁸ the Staff Union Council, the Coalition for the International Criminal Court (CICC) and the International Criminal Court Bar Association (ICCBA). The Review Mechanism also held meetings with the President of the Assembly, Ms. Silvia Fernández de Gurmendi, on multiple occasions, in all stages of its work. The Review Mechanism also invited the views of all relevant stakeholders in the first two stages of its work, i.e. the categorization of recommendations and remaining issues, and the proposal for a comprehensive action plan in order to ensure inclusivity and transparency in its work as indicated by the Assembly, and intends to continue its work in a similar manner throughout the duration of its mandate.

7. Pursuant to the request of the Assembly that the Review Mechanism, “in close coordination with the Court focal points and relevant Assembly mandates, (...) provide regular updates to all States Parties through the Bureau Working Groups, on the review process including on any impediments to progress identified”⁹, the Review Mechanism provided regular briefings on the progress of its work to the Bureau,¹⁰ the New York Working Group,¹¹ and The Hague Working Group, and engaged in interactive discussions with their members.¹² The Mechanism will continue to provide such briefings throughout the duration of its mandate.

II. Mandate of the Review Mechanism

8. The mandate of the Review Mechanism as set out in the resolution is composed of four components, each with a specific deadline for submission.¹³

a) Proposal for a categorization of the Independent Experts’ recommendations and remaining review issues

9. The first phase of the mandate of the Review Mechanism was the submission “to the Bureau for consideration, through its working groups in collaboration with the Court focal points and in close consultation with all States Parties, relevant Assembly mandate holders and civil society, a proposal for a categorization of the Independent Experts’ recommendations and remaining review issues according to the entity responsible (the Assembly, the Court or both) for addressing the issue concerned by 30 April 2021”¹⁴.

⁶ ICC-ASP/19/Res.7, para. 11.

⁷ Mr. James Stewart, Deputy Prosecutor, Mr. Hiram Abtahi, Chef de Cabinet of the Presidency, and Mr. Osvaldo Zavala Giler, Senior Special Assistant to the Registrar.

⁸ Office of Internal Audit; Independent Oversight Mechanism, the Secretariat of the Trust Fund for Victims; Office of Public Counsel for the Defence (OPCD); and the Office of Public Counsel for Victims (OPCV).

⁹ ICC-ASP/19/Res.7, para. 9.

¹⁰ On 18 February, 8 April, 12 May and 2 June 2021.

¹¹ On 9 March, 27 April and 26 May 2021.

¹² On 4 March, 15 April and 18 May 2021.

¹³ ICC-ASP/19/Res.7, paras. 4 (a), 4 (b), and 9.

¹⁴ *Ibid.*, para. 4 (a).

10. The Review Mechanism noted that the first deadline set by the resolution was 31 March 2021, i.e. the Court focal points were requested “to submit to the Review Mechanism and to the Bureau and all States Parties an overall response to the ‘Independent Expert Review of the International Criminal Court and the Rome Statute System - Final Report’, as well as a preliminary analysis of the recommendations contained therein and information on relevant activities already undertaken by the Court, by 31 March 2021”.¹⁵ On 22 March 2021, the Court requested a two-week extension of the deadline for the submission of its overall response, that is, until 14 April 2021, in order to allow the Court's new Presidency, elected on 11 March 2021, sufficient time to acquaint itself with the subject matter at hand. The Review Mechanism, in consultation with the President of the Assembly, referred the request to the Bureau for its consideration. On 30 March 2021, the Bureau granted the extension requested, while noting that the extension of deadline would not affect the overall timeline nor the other specific deadlines for the review process set out in the resolution.

11. In keeping with the principles of transparency and inclusivity, the Mechanism held separate meetings with States Parties and all relevant stakeholders and, on 12 March 2021, invited them to submit comments in writing on the categorization of the recommendations of the Independent Expert Review (IER) Experts, using a model for categorization which it had prepared. The Review Mechanism considered all comments received from the State Parties and the stakeholders in preparing the categorization of recommendations and remaining issues.

12. The Review Mechanism submitted to the Bureau and States Parties the “Categorization of recommendations and remaining issues” on 30 April 2021, in accordance with the deadline set out in paragraph 4 (a) of the resolution ICC-ASP/19/Res.7.¹⁶

13. The Bureau considered and adopted the “Categorization of recommendations and remaining issues” on 31 May 2021, one day after the 30 May deadline set out in paragraph 6 of the resolution, as additional time was needed for Bureau members to negotiate the terms of the decision. In its decision, the Bureau *inter alia* “welcomed the efforts of the Review Mechanism to be inclusive and transparent in the exercise of its mandate within this State driven process as well as its reassurance that States Parties will be involved in the discussions on assessment and implementation of recommendations, regardless of whether they have been allocated to the Court or to the Assembly, with respect for existing mandates as well as judicial and prosecutorial independence”.¹⁷ The involvement of States Parties in the discussions on the recommendations, regardless of their allocation, constitute an important element of the future work on the review of the Court, and a number of States Parties had sought assurances that they would have the opportunity to participate in those discussions.

b) Proposal for a comprehensive action plan for the assessment of the recommendations of the Group of Independent Experts, including requirements for possible further action

14. Following the submission of the categorization of recommendations on 30 April 2021, the Review Mechanism turned to the second stage of its mandate, a proposal for a comprehensive action plan for the assessment of the recommendations of the Group of Independent Experts, including requirements for possible further action, as appropriate.¹⁸ Also in this stage of its work, the Review Mechanism consulted with States Parties, the Court focal points and all relevant stakeholders on the three components of the action plan set out in the resolution, i.e. the allocation of the recommendations; the prioritization of recommendations, based on annex I of the IER report; and timelines for the consideration of the recommendations. The Mechanism relied on the inputs of Assembly mandate holders whose role at this stage was crucial, given their institutional knowledge.

¹⁵ ICC-ASP/19/Res.7, para. 5.

¹⁶ https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/Categorization%20of%20the%20IER%20Recommendations-final.29Apr21.1945.pdf

¹⁷ https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/Bureau%20decision-Categorization.31May21.2400.docx.pdf

¹⁸ ICC-ASP/19/Res.7, para. 4 (b).

15. On the allocation of recommendations, the Mechanism requested all stakeholders to provide their views on which actors they consider responsible for the consideration of the recommendations and possible further action.¹⁹ In this regard, a preliminary suggested format along with model allocation, prepared by the Review Mechanism was circulated. The Mechanism decided to work through existing Assembly structures in order to avoid burdening the Assembly with new structures. As far as possible, the Mechanism allocated recommendations on the basis of the existing platforms. As per the resolution, the residual issues for which there was no specific allocation, were taken up by the Review Mechanism itself.²⁰ On the prioritization of recommendations, the Review Mechanism took note that the IER Experts had indicated areas of priority in its annex IA, while also recognizing that States and the Court might have additional or other priorities. Annex IA was therefore a starting point, and the Mechanism adopted an approach to prioritize the recommendations based on the Experts annex and the submissions of stakeholders' various submissions. The prioritization is also reflected in the timeline for assessment. As regards the timelines for consideration of the recommendations, the Review Mechanism understood this to mean the time when the assessment of the recommendations was completed and a decision to take further action (or not) is taken, and not the time needed for their implementation. The Mechanism proposed to indicate timelines on a half-yearly basis, which would allow for flexibility but also introduce the important element of time constraint.

16. In the interest of continued transparency and inclusiveness, as indicated by the Assembly resolution, the Review Mechanism invited all States Parties and all relevant stakeholders to submit comments in writing on the three elements of the action plan. In addition to the written comments, the Review Mechanism considered the views received from various stakeholders, including the then Prosecutor-elect (now Prosecutor), the International Criminal Court Bar Association (ICCBA), and civil society organizations.²¹

17. The Review Mechanism submitted to the Bureau the "Proposal for a comprehensive action plan for the assessment of the recommendations of the Group of Independent Experts, including requirements for possible further action" on 30 June 2021,²² in accordance with paragraph 4 (b) of the resolution. The comprehensive action plan is before the Bureau for its consideration and adoption by 30 July 2021.²³

III. Other matters

a) Platform for discussion

18. In its consultations with States Parties, the Court and civil society, the need for a platform where States, the Court and civil society could discuss the assessment and implementation of the recommendations had been recognized. The Review Mechanism noted that, while the issue of a forum for discussion had not been included in the resolution, it had alluded to the need for such discussion in its Introductory note submitted together with the Categorization report.²⁴ The Mechanism noted that this point had been part of the Bureau's decision dated 31 May 2021. In its Introductory note, the Mechanism had encouraged States Parties to "use (preferably) existing Assembly mandates or mandate holders to engage and discuss on the assessment and/or implementation of the recommendations, without of course affecting the judicial and prosecutorial independence of the Court and the integrity of the Rome Statute. This is of particular relevance taking into account the comprehensive nature of some of the recommendations."

¹⁹ Ibid., para. 4 (b) (i)

²⁰ Ibid., para. 4 (b) (ii).

²¹ Coalition for the International Criminal Court (CICC), as well as the American Bar Association (ABA), Asian Justice and Rights (AJAR), Human Rights Watch (HRW), International Federation for Human Rights (FIDH), and World Federalist Movement (WFM).

²² https://asp.icc-cpi.int/EN_Menus/asp/review-court/pages/action-plan.aspx

²³ ICC-ASP/19/Res.7, para. 6.

²⁴ Proposal for categorization of the Independent Experts Review Recommendations and remaining Review issues Introductory note, para. 7: https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/Proposal%20for%20categorization.final.28Apr21.1845b.pdf

19. The Review Mechanism considered that all recommendations, regardless of their categorization, would be discussed in the relevant Assembly mandate or facilitation, while the Mechanism would function as the mandate-holder where no relevant mandate existed. The Court itself encouraged the Review Mechanism to explore possible options for platforms for discussion, recognizing that both the Court and the Assembly and civil society may pass on feedback of value to each other, regardless of whether a particular recommendation has been categorized exclusively to the Court or to the Assembly, or both. The level of discussion would vary depending on the nature of the issue, with some recommendations requiring a more detailed and intricate consideration than others, in all circumstances respecting judicial and prosecutorial independence. In some cases a written or verbal report regarding a specific recommendation would probably suffice in other instances a thorough discussion would be required.

20. The Review Mechanism discussed in general terms with stakeholders the possible options for platforms for discussion, and there was general support for the idea. Consequently, the Mechanism has decided to include indications of proposed platforms for discussion of the recommendations in the comprehensive action plan. A more detailed discussion with Assembly mandate holders may be needed (see also Introductory note to the Comprehensive Action Plan).

b) The road to ASP20

21. The Review Mechanism discussed with States Parties the way forward towards the twentieth session of the Assembly. It recalled that the Assembly had requested the mandate holders “to submit to the Bureau the outcome of its consideration, including on action already taken and proposals for next steps, by 1 November 2021”²⁵ while the Roadmap for facilitations required them to submit reports to the Bureau by 8 November 2021. The Mechanism has sought the views of the mandate holders on this and will continue discussing this point with them.

22. In addition, the Review Mechanism began consideration of the outcome of its work and the outputs for the twentieth session of the Assembly. It draws to the attention of the President of the Assembly and the Assembly mandate holders the need to consider whether the Assembly should adopt a stand-alone resolution on the outcome of the work of the Review Mechanism, or whether the mandates arising from the review process should be included in the omnibus resolution, or both. It noted also that a procedural decision would be necessary if the Assembly wished to extend the mandate of the Review Mechanism.

c) Participation of civil society

23. The Review Mechanism drew to the attention of Assembly mandate holders that, in line with the principles of transparency and inclusivity, it was necessary to ensure that civil society organizations were invited to participate in the meetings of all facilitations. It was noted however, that meetings of some facilitations, e.g. the budget facilitation, had traditionally been open to States Parties only. In that regard, it was suggested that while meetings held for the purpose of discussing the budget of the Court would continue to be closed, those meetings at which the IER recommendations on the budget were discussed would be open to all stakeholders.

IV. Acknowledgements

24. The State Party representatives (Co-Chairs) of the Review Mechanism firstly want to express deep gratitude to the *ad country* focal points, Ms. Monica Mosammat Shahanara, Ms. Nawrid Sharmin, and Mr. Nasir Uddin (Bangladesh), Mr. Jaime Moscoso and Mr. José Juan Hernández (Chile), and Ms. Paulina Dudzik and Mr. Władysław Manteuffel (Poland), for their supportive role and valuable inputs in the work of the Mechanism.

²⁵ ICC-ASP/19/Res.7, para. 7.

25. As a whole, the Mechanism would also like to express their gratitude to the three Court focal points, Mr. James Stewart, Deputy Prosecutor, Mr. Hiran Abtahi, Chef de Cabinet of the Presidency, and Mr. Osvaldo Zavala Giler, Senior Special Assistant to the Registrar, for the collaborative work and high spirit of engagement in the work of the Mechanism, acknowledging the efforts in spite of challenging transition processes for the Judiciary and the Office of the Prosecutor.

26. The Mechanism also acknowledges the support and advice as requested by the President of the Assembly, Ms. Silvia Fernández de Gurmendi, and the Vice-Presidents, Ambassador Robert Rae (Canada) and Ambassador Kateřina Sequensová (Czech Republic). The Mechanism is deeply indebted to the Assembly Secretariat, in particular Ms. Gaile Ramoutar, for consistent efficient and responsive assistance throughout the work of the Mechanism.
